IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.1026 of 2000

Sangan @ Paramasivam .. Appellant/Accused-1

vs.

State by Inspector of Police
B-7,Ramanathapuram Police Station
(Law and Order)
Coimbatore District .. Respondent/complainant

This appeal is filed under Section 374 of Cr.P.C. against the order in S.C.No.227 of 1999 dated 30.11.1999 on the file of the II Additional Sessions Judge, Coimbatore.

For Appellant : Mr.K.Kalyanasundaram

For Respondent : Mr.V.R.Balasubramanian
Addl.Public Prosecutor(Crl.Side)

JUDGMENT

This appeal has been preferred by the accused, who convicted under Section 304(I) of IPC by the Second Additional Sessions Judge, Coimbatore in S.C.No.227 of 1999,is the appellant who is ranked as A1. The co-accused A2 was also convicted under Section 323 IPC and this was informed by the learned Additional Public Prosecutor that she has served the sentence and has not filed any appeal.

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2. The short facts of the case of the prosecution are that on 31.5.1997 at about 3.30p.m., in front of the Saravana Bhavan Hotel on the Trichy road,Ramanathapuram, Coimbatore District. There was a quarrel between the deceased Ramu and the appellant herein regarding conducting of a cobbler shop in front of Saravana Bhavan Hotel and both of them had thrown bricks against each other and infuriated by the act of the victim, the accused took a cobbler needle and stabbed on the neck of the victim below the left ear causing instantaneous death. According to the

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prosecution, the co-accused had also assaulted the victim with a brandy bottle.

3. The case was taken on file by the learned Judicial Magistrate No.6,Coimbatore as PRC NO. 5 of 1998 after furnishing copies under section 207 Cr.P.C., the learned Judicial Magistrate had committed the case to Sessions under Section 209 Cr.P.C.. On appearance of the accused on summons, the learned Sessions Judge has framed charges levelled against the accused and when the offence was explained to the accused, he pleaded not guilty.

4. Before the trial Court, P.Ws 1 to 10 were examined. Exs P1 to P17 were exhibited and M.Os 1 to 5 were marked.

4a) P.W.1 is the eye witness to the occurrence, who is also a Cobbler having his shop in front of Saravana Bhavan Hotel, the place of occurrence. According to him, both the victim as well as the accused are known to him and that on 31.5.1997 at about 8.00 a.m., he along with other workers, prepared for the days work in front of Saravana Bhavan Hotel, Ramanathapuram, Coimbatore District, which was prevented by the Traffic Police, which made them to keep their belongings aside and stood on the side of the platform and at that time one Veeran had asked him to come to attend to the work of cleaning the sewerage and accordingly he accompanied the said Veeran in order to clean the Sewerage at 6th Street, Bharathy Nagar and while they were cleaning the Sewerage, the accused came there and he also joined with them in cleaning the ditch and after receiving their wages, they returned to Ramanathapuram and stood in front of Saravana Bhavan Hotel. At that time, his son deceased Ramu came there and asked why they have not attended to their regular work. The accused Paramasivam informed him that police have prevented them from doing their work in front of Saravana Bhavan Hotel and then there arose a quarrel between the deceased Ramu and the accused and immediately they entered into brick batting. The accused had also pushed Ramu on the ground . The co-accused Veerammal assaulted Ramu with a brandy bottle and A1 Paramasivam had stabbed the victim on his neck with a cobbler's needle which resulted in profuse bleeding from the nap of the victim and after the occurrence both the accused ranaway from the place of occurrence and that he took the victim in an Autorickshaw to the Government Hospital ,Coimbatore where the doctors said that the victim already breathed his lost. Ex P1 is the complaint preferred by him with the police. He has identified M.O.1 Cobbler Needle used by A1 at the time of occurrence, when committing the crime.

4b. P.W.2 ,the Head Constable of P6, Peelamedu Police Station would say that he had prevented the cobblers from having their business in front of the Saravana Bhavan Hotel and at about 3.30p.m., on 31.5.1997, while he was on duty, he heard hue and cry

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in front of Saravana Bhavan Hotel, when he went near the place of occurrence, he saw both deceased and the accused Paramasivam were throwing bricks at each other and then they were quarreling with each other and when he was nearing the place of occurrence, the accused had pushed down the victim Ramu on the ground and stabbed below his left ear in the nap region with a cobbler's needle and that co-accused Veerammal had assaulted the victim with a brandy bottle. He has identified both the accused before the trial Court. According to him, the victim was taken in an Autorickshaw to the Government Hospital and both the accused had made good their escape and he could not apprehend them.

4c. P.W.3 has also corroborated the evidence of P.W1 and P.W.2. He has also identified M.O.1 Cobbler's Needle, M.O.2 bottle used by the accused in the occurrence.

4d. P.W.9 is the then Sub Inspector of Police, who had registered the case on the basis of the complaint preferred by P.W1 under Cr.No.436 of 1997 under Section 302 of IPC. Ex P15 is the printed First Information report. Ex P16 is the rough sketch.

4e. P.W.10, the Inspector of Police, who took up investigation in this case, had visited the place of occurrence and prepared observation Mahazar Ex P2 in the presence of P.W.4 and another witness. The blood stained sand M.O.3 and Sample Sand M.O.4 were recovered under Ex P2 Mahazar by P.W.9 in the presence of P.W.4. M.O.5 (series) Bricks(4). P.W.9 had conducted inquest in the presence of panchayatars. Ex P17 is the inquest report. The corpse was sent to post mortem through P.W.6, the police constable. P.W.9 has arrested the accused on 1.6.1997 at about 11.45 a.m., in the presence of P.W.4 and the voluntary confession statement of the accused was recorded before him in the presence of P.W.4. The admissible portion of confession statement is Ex P5. On the basis of Ex P5, the accused had taken P.W.9 and other witnesses near the public toilet at Olambus and took out a Cobbler's needle used in the crime from the hidden place, which was recovered by P.W.9 under Ex P6 in the presence of P.W.4 and other witness Rangaraj. P.W.9 had examined the witnesses and recorded their statements.

4f. P.W.5 is the Doctor, who had first seen the victim in the Government Hospital ,Coimbatore, while he was on duty at 4.00p.m., on 31.5.1997, who was brought by his father P.W.1. On examination, he could not find heart beat in the victim. The emergency treatment, given to the victim to restore his heart beat, ended in vain. Hence, the doctor has declared the victim as brought dead under Ex P7 Accident Register.

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4g. P.W.6 is the postmortem constable, who handed over the corpse as per direction of P.W.9 to the postmortem doctor with Ex P8 requisition of the Investigating Officer.

4h. P.W.7 is the doctor, who had conducted autopsy on the corpse of the deceased and issued Ex P9 post mortem certificate. P.W.7 has noted the following injuries in ExP9 on the body of the victim.

> "1. Diffuse contusion with blackening of the skin 8 x 5 cm on the back of left side of the neck.
> 2. A small irregular abrasion 2 x 1 c.m on the back of left side neck
> 3. A punctured wound 1 x 0.5 c.m cranial cavity deep on the back of left side of the neck with fresh blood oozing from the wound. The wound is 4 cms behind and below the left ear. The margins are irregular and bruised.

The doctor has opined that the victim would have died 12 to 25 hours prior to the autopsy due to haemorrhage and also due to injury No.3. The doctor has further opined that M.O.1 cobbler's needle is sufficient to cause injury No.3.

4i. P.W.9 had given a requisition to the Judicial Magistrate for sending the material objects connected with this case to the forensic Science Laboratory for chemical examination. P.W.8 is the Head Clerk of Judicial Magistrate's Court No.6, Coimbatore, who would depose that as per Ex P10 requisition the material objects connected with this case were sent to the forensic science laboratory and Exs P11 and P12 are the analysts' report and Exs P13 and 14 are the serologists' report.

4j. P.W.10 after completing the formalities had laid charge sheet against the accused under Section 302 IPC r/w 34 of IPC.

5. When the incriminating circumstances were put to the accused, he denied his complicity with the crime. The learned Sessions Judge, after going through the evidence, both oral and documentary and after hearing the learned counsel appearing for the appellants as well as the learned Public Prosecutor has come to a conclusion that the guilt against A1 has been proved beyond any reasonable doubt and accordingly convicted under Section 304 (1) of IPC and sentenced to undergo 10 years rigorous imprisonment and convicted A2 under Section 323 IPC and sentenced to undergo one year rigorous imprisonment. No fine amount was imposed on the accused. Aggrieved by the findings of the learned Sessions Judge, A1 alone has preferred this appeal.

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6. Now the point for determination in this appeal is whether the conviction and sentence imposed against the accused under Section 304(1) of IPC is liable to be set aside for the reasons stated in the memorandum of appeal?

7. Heard Mr.K.Kalyanasundaram, learned counsel for the appellant and Mr.V.R.Balasubramanian, learned Additional Public Prosecutor for the respondent and considered their rival submissions.

8.The Point:

The learned counsel appearing for the appellant would focus the attention of this Court to the fact that immediately before the occurrence, there was a quarrel between the accused and the victim and even according to the prosecution ie., eye witnesses P.W.1 to P.W.3, there was throwing of bricks at each other but no one was injured. Admittedly the occurrence had taken place in a trivial issue of putting up their temporary shop on the pavement in front of Saravana Bhavan Hotel, Ramanathapauram, Coimbatore District. It is further seen from the evidence of P.W.1 that a few hours prior to the occurrence, both P.W.1(father of the victim) and the accused together engaged in cleaning the ditch at the instance of one Veeran and that each of them were paid Rs.50/- for the work they have done at 6th Street, Bharathy Nagar. So from the available evidence, it is seen that there is absolutely no intention or motive for the accused to kill the victim. Only due to sudden quarrel which infuriated the accused to took a cobbler's needle and inflicted only one stab injury on the nap of victim, which resulted in the death of the victim. It is seen from the evidence of Doctor P.W.7 who had conducted postmortem on the corpse of the victim, there was only one stab injury found on the corpse, which was fatal.

9.The learned counsel appearing for the appellant relying on a decision reported in Mohd.Shakeel-vs-State of A.P(2007)3 Supreme Court Cases, 119) and contended that in a case of similar nature, the Apex Court has held that the act of the accused will attract only an offence under Section 304(ii) of IPC and not an offence under Section 304(i) of IPC because there was no intention to kill the victim. The fact of the case cited by the learned counsel appearing for the appellant is that on the date of occurrence, the accused had inflicted only one injury which resulted in the death of the victim and before the occurrence, there was also a quarrel between the accused and the victim in which the accused had also received injury at the hands of the victim. The trial Court has convicted the accused under Section 302 of IPC to undergo life imprisonment and to pay a fine of Rs.2,000/- with default sentence which resulted in the appeal before the High

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Court, which also confirmed the conviction. When the matter came before the Apex Court, while modifying the conviction and sentence, the Honourable Apex Court has observed as follows:

> "Coming now to the nature of offence, it may be stated that the appellant is said to have inflicted only one injury and he has also received injury. In the facts and circumstances, we are of the view that the High Court was not justified in confirming conviction of the appellant under section 302 IPC rather he should have been convicted under Section 304 Part II IPC. It has been stated that the appellant is in custody since the year 1999. In our view, ends of justice would be met in case the appellant is awarded punishment under Section 304 Part II IPC for the period already undergone".

The learned counsel appearing for the appellant would contend that the facts of the above case squarely applies to the present facts of the case also. The accused is in jail for more than 3 ½ years and hence for awarding sentence also, the same yardstick which was followed by the Apex Court may be followed in this case also.

10. Heard the learned Additional Public Prosecutor in this regard who would also admit that the accused is in jail from the date of arrest ie., 1.6.1997 and he was released on bail only on 1.12.2000. So I am of the view that the findings of the learned Additional Sessions Judge, Coimbatore in S.C.No.227 of 1999 is liable to be modified.

11. In the result, the appeal is allowed in part. The accused is convicted under Section 304(ii) of IPC instead of Section 304 (i) of IPC and awarded punishment under Section 304 (ii) of IPC for the period already undergone. The accused is set at liberty. The bail bond executed by the appellant shall stand cancelled, if he is not required in any other cases.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To,

1. The II Additional Sessions Judge, Coimbatore

2. Do thro The Principal Sessions Judge, Coimbatore.

3. The Judicial Magistrate No.6, Coimbatore

4. -do- thro the Chief Judicial Magistrate, Coimbatore

5. The Superintendent of Central Prison, Coimbatore.

6. The Inspector of Police, B-7,Ramanathapuram Police Station, Coimbatore.

7. The Public Prosecutor, High Court, Madras

8. The Director General of Police,
Chennai.

9. The District Collector,
Coimbatore.

1 cc to Mr.K. Kalyanasundaram, Advocate, Sr. 33568

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